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Dr. Bernadette McGuire-Rivera
Associate Administrator, Office of
Telecommunications and Information
Applications
NTIA
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Washington, DC 20230

Mr. David Grahn
Associate General Counsel
U.S. Department of Agriculture
Rural Development
Room 2017, Mail Stop 1423
1400 Independence Avenue, S.W.
Washington, DC 20250

Dear Dr. McGuire-Rivera and Mr. Grahn:

Infinera is filing this letter to amend the record in this proceeding relating to the "Buy American" provisions of the American Recovery and Reinvestment Act (ARRA), and to suggest ways in which ARRA broadband stimulus can fulfill the Congressional intent of creating U.S. jobs. This follows Infinera's April 13 letter.

Infinera is an example of a U.S. broadband manufacturing success story. We manufacture optical networking systems for metro and long-haul networks. We are headquartered in Sunnyvale, California and have manufacturing facilities in Allentown, PA; Annapolis Junction, MD; and Sunnyvale. Last year, Infinera had revenue of $353 million. We employ more than 700 people in the U.S. and 900 worldwide We have developed a new optical networking technology known as photonic integration, a technology, we believe, holds the potential for revolutionary benefits in terms of size, cost, performance, reliability, and power consumption of optical networking systems.[1] Our success is such that Infinera optical networks have been deployed throughout the U.S. and exported worldwide to markets including Europe, China, Japan, and elsewhere.

Since Infinera's April 13 filing, there have been several presentations on the record that imply that there is no or little U.S. broadband manufacturing.[2] Specifically, Alcatel-Lucent's May 19 filing claims that "Gigabit optical equipment" and "fiber-optic switching and transmission equipment" are not available from U.S. manufacturers. This is misleading, at best. The term "gigabit optical equipment" does not describe the way the industry is structured; i.e. into: core (or long-haul) optical; metro optical; and access optical. Infinera has a significant market-share in both the long-haul and metro optical markets. In fact, our company is the leading supplier of core optical equipment in North America, ahead of foreign-based suppliers including Alcatel-Lucent and Nokia Siemens Networks. In addition, our products provide switching capabilities, as do those of other U.S. manufacturers, making specious the claim that there are no U.S. providers of fiber-optic switching equipment.

[1] For more information on our ground-breaking technology, please see: http://www.infinera.com/technology/overview.html.

[2] *See*, *for example,* Alcatel-Lucent May 19, 2009 filing, and Cisco May 1, 2009 filing.

Infinera believes that more U.S. companies would meet the "Buy American" standard if there is a threshold for what is considered a U.S. manufactured Information Communications Technology (ICT). In order to be considered an U.S. manufactured ICT, we believe that a product should meet two criteria: 1) more than 50% of the value-added production takes place in the U.S.; and 2) more than 50% of the company's research and development for that product takes place in the U.S. This standard would allow NTIA and RUS to take into account the globalization of the telecommunications market,[3] yet help ensure that U.S. jobs are created by the billions of dollars of taxpayer stimulus funds spent on telecommunications infrastructure deployment. Value-added production means U.S. manufacturing jobs, even if some components that go into that value-added product do not qualify as American. ICT products are complex, and can consist of hundreds, or even thousands, of components. It would be a very difficult, if not impossible standard to meet for ICT to require 100% U.S.-made components. A lower value-added threshold means that some products where a significant portion of the manufacturing process is completed in the U.S. would be available to fulfill the Buy American goals of the ARRA. Over the past decade, many U.S. telecommunications manufacturing jobs have moved overseas. Our proposal will help stem that tide of lost employment and will strengthen those areas of the U.S. telecommunications industry where the U.S. is still a world leader, including optical networking, IP routing, and Ethernet switching, to name just a few.[4]

A requirement that a majority of R&D is conducted in the U.S. will similarly help ensure that taxpayer money is being spent in a way that provides high-value U.S. jobs. Loss of U.S.-based R&D is a major concern for the ICT industry. R&D is the backbone of the high-tech industry, and is critical for the industry's survival and growth. Infinera spends 23% of its revenue on R&D. This type of R&D spending is necessary when dealing with cutting-edge technologies, such as our photonic integration. A 50% U.S. R&D requirement would recognize and reward R&D conducted in the U.S., yet would permit enough flexibility for companies that conduct R&D jointly in the U.S. and overseas. It would enable the U.S. government to ensure that it implements a formula that spends public funds in a way that achieves the twin objectives of strengthening the U.S. economy (and the U.S. jobs base) while at the same time allows companies the flexibility to pursue the goals of efficient production and maximization of shareholder value.

Infinera believes that application of the "Buy American" provisions of ARRA does not need to be all or nothing. Under Section 1605(b) of the ARRA, there are three specific criteria for waiving the Buy American provisions: 1) the product is not produced in the U.S. in sufficient quantities; 2) purchasing U.S. manufactured goods would raise the overall cost of the project by 25%; or 3) the Buy America provision would be inconsistent with the public interest. Infinera understands that the telecommunications equipment manufacturing market has become more global and, indeed, some systems, some network elements, and some components may not be available from U.S. companies at all. For those parts of the network that are simply unavailable from a U.S. source, it is appropriate to grant a waiver. However, in markets where U.S. products

[3] *See, for example,* Telecommunications Industry Association June 1, 2009 filing.
[4] A stronger U.S. telecommunications manufacturing base will help with the U.S. trade imbalance, strengthen U.S. education in technology, engineering, and the sciences, and can be a factor in building secure networks.

are available, no waiver should be granted. We believe that Infinera's presence in the U.S. market means that none of the three waiver conditions are met in the optical network systems or fiber optic switching markets. Infinera is capable of meeting the needs of the U.S. broadband market in sufficient quantities, at highly competitive prices, and with many of the best reliability statistics in the industry.

In the event that the Office of Management and Budget's April 3 guidance on grants is determined to exempt non-governmental recipients from the Buy American provisions, there are other ways to ensure that the broadband stimulus dollars maximize benefits for U.S. companies. We suggest that NTIA and RUS should use a percentage of U.S.-based equipment as a part of the comparative criteria for determining which applications should receive funding. ARRA's undisputed goal of US job creation is achieved when taxpayers are assured that the billions of dollars being spent by the government are not being shipped overseas when U.S. companies are capable of providing the same equipment and facilities right here at home. Using U.S. job creation as a comparative criterion not only in the number of people put to work physically laying fiber and deploying the broadband system, but also the number of U.S. manufacturing and engineering jobs impacted, will help maximize U.S. job retention and creation. There are many important factors that NTIA and RUS must consider when evaluating applications. It would be a disservice to the U.S. taxpayer and a frustration of Congressional intent if impact on U.S. telecommunications manufacturers were not a criterion given great weight.

The telecommunications manufacturing industry is at a crossroads. While jobs continue to be lost[5], innovative companies such as Infinera are creating next generation technology here in the U.S. Photonic integrated circuits are a young, but rapidly growing technology market, and we believe that the right policies can help this growth significantly.

Please do not hesitate to contact me or Jeff Ferry, our Communications Director, should you or your staff have any questions or wish to discuss this matter further with us.

Yours sincerely,

/s/

Jagdeep Singh
Co-Founder and CEO
Infinera Corporation

cc by e-mail: Mark Seifert
John Morabito
Kenneth Kuchno
Lisa Zaina

[5] *See*, Communications Workers of America May 4, 2009 filing.